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Reply to Office Action of April 16, 2008

REMARKS

Favorable reconsideration of this application in light of the following claim amendments and remarks is respectfully requested.

Claims 1, 3, 4, 6-12, 15 and 16 are pending in the present application. By this amendment, claims 8-11 have been amended. No new matter is involved.

Rejection under 35 U.S.C. § 112, Second Paragraph

Claims 8, 9, 11 and 12 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. This rejection is respectfully traversed.

Claims 8 and 9 are amended to clarify the term "securing mechanism."

Claim 11 is amended to provide number consistency between the holes and the screws. Applicant also notes that claim 10, from which claim 11 depends, is amended to depend directly from claim 1.

These amendments do not narrow the scope of the claims that are being amended. Instead, they clarify the meanings of those claims.

Reconsideration and withdrawal of this rejection of claims 8, 9, 11 and 12 are respectfully requested.

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Rejections under 35 U.S.C. § 103

Claims 1, 3, 4, 6-12, 15 and 16 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Applicant's admitted prior art (AAPA) in view of U. S. Patent 5,542,795 to Mitchell. This rejection is respectfully traversed.

Because the rejection is based on 35 U.S.C. § 103, what is in issue in such a rejection is "the invention as a whole," not just a few features of the claimed invention. Under 35 U.S.C. § 103, "[a] patent may not be obtained . . . if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." The determination under Section 103 is whether the claimed invention as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made. *See In re O'Farrell*, 853 F.2d 894, 902, 7 USPQ2d 1673, 1680 (Fed. Cir. 1988). In determining obviousness, the invention must be considered as a whole and the claims must be considered in their entirety. *See Medtronic, Inc. v. Cardiac Pacemakers, Inc.*, 721 F.2d 1563, 1567, 220 USPQ 97, 101 (Fed. Cir. 1983).

In rejecting claims under 35 U.S.C. § 103, it is incumbent on the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner is expected to make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one of ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed

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invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. *Uniroyal Inc. v. F-Wiley Corp.*, 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir. 1988), *cert. denied*, 488 U.S. 825 (1988); *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), *cert. denied*, 475 U.S. 1017 (1986); *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the Examiner are an essential part of complying with the burden of presenting a *prima facie* case of obviousness. *See In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783-84 (Fed. Cir. 1992). To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be suggested or taught by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1970). All words in a claim must be considered in judging the patentability of that claim against the prior art. *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

A suggestion, teaching, or motivation to combine the prior art references is an "essential evidentiary component of an obviousness holding." *C.R. Bard, Inc. v. M3 Sys. Inc.*, 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998). This showing must be clear and particular, and broad conclusory statements about the teaching of multiple references, standing alone, are not "evidence." *See In re Dembiczak*, 175 F.3d 994 at 1000, 50 USPQ2d 1614 at 1617 (Fed. Cir. 1999).

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Moreover, it is well settled that the Office must provide objective evidence of the basis used in a prior art rejection. A factual inquiry whether to modify a reference must be based on objective evidence of record, not merely conclusory statements of the Examiner. *See In re Lee*, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002).

Furthermore, during patent examination, the PTO bears the initial burden of presenting a *prima facie* case of unpatentability. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). If the PTO fails to meet this burden, then the Applicant is entitled to the patent. Only when a *prima facie* case is made, the burden shifts to the Applicant to come forward to rebut such a case.

Independent claims 1 and 16 recite a combination of features and are directed to a refrigerator door assembly including a sliding door configured to be slid open and closed, a handle provided on a top edge surface of the door, and a plurality of handle holders each having an end fixed to the door and another end attached to the handle. Further, the end fixed to the door includes a handle holder member extended to the handle, and a supporting member protruded in a first direction on a lower surface of the handle holder member and receivable within a groove provided in the door (and further with respect to claim 1, for preventing damage from occurring on the handle holder). In addition, the supporting member is disposed between the handle and a securing mechanism configured to secure a corresponding handle holder to the side of the door so as to absorb a force applied to the handle in a second direction opposite to the first direction and reinforce a strength of the handle holder when the sliding door is slid open and

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closed, and the supporting member is integrally formed with the handle holder such that the supporting member and the handle holder are a single unitary piece.

Initially, Applicant respectfully submits that none of the applied art discloses all of the features recited in the claimed invention.

Applicant's Figs. 1-3 show a refrigerator drawer door handle, and Fig. 3 shows a broken version of the door handle disclosed in Figs. 1 and 2.

Applicant's Figs. 1-3 clearly do not disclose (1) a supporting member protruded in a first direction on a lower surface of the handle holder member and receivable within a groove provided in the door, preventing damage from occurring on the handle holder, (2) wherein the supporting member is disposed between the handle and a securing mechanism configured to secure a corresponding handle holder to the side of the door so as to absorb a force applied to the handle in a second direction opposite to the first direction and reinforce a strength of the handle holder when the sliding door is slid open and closed, and (3) wherein the supporting member is integrally formed with the handle holder such that the supporting member and the handle holder are a single unitary piece.

Mitchell clearly does not disclose (1) a refrigerator door assembly; (2) a sliding door configured to be slid open and closed; (3) a plurality of handle holders each having an end fixed to the door and another end attached to the handle, wherein the end fixed to the door comprises (4) a handle holder member extended to the handle; (5) a supporting member protruded in a first direction on a lower surface of the handle holder member and receivable within a groove provided in the door; (6) wherein the supporting member is disposed between the handle and a

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securing mechanism configured to secure a corresponding handle holder to the side of the door so as to absorb a force applied to the handle in a second direction opposite to the first direction and reinforce a strength of the handle holder when the sliding door is slid open and closed; and (7) wherein the supporting member is integrally formed with the handle holder such that the supporting member and the handle holder are a single unitary piece.

Because neither the AAPA nor Mitchell references disclose these positively recited features of the claimed invention, there is no basis in these references to come up with, or render obvious, the claimed invention.

Secondly, Applicant respectfully submits that the newly applied primary reference, i.e., Mitchell, differs so substantially from Applicant's Figs. 1-3, that it teaches away from being combined, as suggested in this rejection.

To establish a *prima facie* case of obviousness, one must show "some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references." *Fine*, 837 F.2d at 1074, 5 USPQ2d at 1598. There is no suggestion to combine, however, if a reference teaches away from its combination with another source. *See Id.* at 1075, 5 USPQ2d at 1599. "A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant . . . [or] if it suggests that the line of development flowing from the reference's disclosure is unlikely to be productive of the result sought by the applicant." *In re Gurley*, 27 F.3d 551, 553, 31 USPQ2d 1130, 1131 (Fed. Cir.

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1994). If when combined, the references "would produce a seemingly inoperative device," then they teach away from their combination. *In re Spinnoble*, 405 F.2d 578, 587, 160 USPQ 237, 244 (CCPA 1969); *see also In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984) (finding no suggestion to modify a prior art device where the modification would render the device inoperable for its intended purpose).

Mitchell is directed to a cutter for performing plunge and face cutting operations on a workpiece with cutting inserts having different shapes. A primary object of Mitchell is to provide cutter insert seats that are designed "for positively securing the cutting inserts against axial, radial, or tangential movement (see the sentence bridging cols. 1 and 2)." To achieve this object of invention, Mitchell provides support means for both the cutter and the cutter insert including a first elongated rail-like projecting element and a first complementarily-shaped recess, both of which may be substantially parallel to the insert side edges and recess side shoulder for preventing transverse relative movement between the insert and the cutter body (see col. 2, lines 49-54). Mitchell also provides a second elongated projection and a second complementary recess, which may be oriented substantially parallel to, or perpendicular to, the first rail and first complementary recess (see col. 2, lines 60-67).

Mitchell's disclosure fails to disclose or suggest anything to do with (1) sliding drawer doors; (2) sliding drawer door handle holders; (3) sliding drawer doors with horizontal door handles connected to a top surface of the sliding drawer by separate handle holders having one end fixed to the top of the drawer and a free end holding the drawer handle; or (4) strengthening drawer handle holders subjected to a force placed thereon by a person who opens the door by

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pulling upward on the handle, and is not directed to solving any problem that is shown to exist in the AAPA. In fact, Mitchell is only directed to solving a problem that is not shown to exist in the AAPA.

Another way of stating this is that Mitchell is non-analogous to the AAPA. The test for non-analogous art is first whether the art is in the same field of the inventor's endeavor and, if not, whether it is "reasonably pertinent to the problem with which the inventor was involved." *In re Wood*, 599 F.2d 1032, 1036 (CCPA 1979). "A reference is reasonably pertinent if, even though it may be in a different field" of endeavor, it logically would have commended itself to an inventor's attention in considering his problem "because of the matter with which it deals." *In re Clay*, 996, RF.2d 656, 659 (Fed. Cir. 1992).

Applicant respectfully submits that Mitchell is clearly not in the same field of endeavor as the AAPA because the AAPA door handle is not a cutter or a cutter insert and is not routinely subject to cutting deep pockets in a workpiece in both the vertical and horizontal directions, and does not have a cutter and cutter inserts where the inserts need to be secured against axial, radial or tangential movement during opening or closing of a door, as is Mitchell.

Furthermore, the AAPA and Mitchell are not directed to addressing or solving the same problem, and as a result, one of ordinary skill in the art would have no incentive to turn to Mitchell to modify the AAPA door handle, as suggested.

Even the Office Action tacitly admits this when it relies on col. 5, lines 51-57 of Mitchell for a teaching of preventing slippage by the AAPA handle holders.

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The AAPA is not disclosed as having a slippage problem. In fact, because the AAPA has two door handle holders 5 which are securely fastened at their one end to the upper surface of the sliding door and are securely fastened at their other end to a handle 4, one would not logically or reasonably expect a slippage problem of door handle holders 5 whatsoever.

Accordingly, there is no logical reason for one of ordinary skill in the art, let alone an incentive, to look to Mitchell to solve a non-existent door handle holder slippage problem.

Additionally, the Office Action fails to show that the unwanted relative movement between Mitchell's cutter and any of Mitchell's cutter inserts has anything whatsoever to do with breakage of door handles of the AAPA. In this regard, Mitchell does not mention breakage of any of its components. Instead, Mitchell focuses on solving relative movement problems between a cutter and a cutter insert and is completely devoid of any disclosure of breakage of the cutter or of the cutter inserts.

Thus, one of ordinary skill in the art would not have any incentive whatsoever to turn to Mitchell to solve the door handle holder breakage problem of the AAPA.

For at least these reasons, one of ordinary skill in the art would have no proper incentive to look to Mitchell to modify Fig. 3 of Applicant, i.e., the AAPA.

Applicant respectfully submits that the proposed combination of references is done in a manner that attempts to reconstruct the Applicant's invention only with the benefit of hindsight, using Applicant's disclosure against Applicant, which is fundamentally improper and is clearly insufficient to present a *prima facie* case of obviousness.

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Accordingly, it is respectfully submitted that the Office Action fails to make out a *prima facie* case of obviousness of the invention recited in independent claims 1 and 16 and each of the claims depending therefrom.

Reconsideration and allowance of claims 1, 3, 4, 6-12, 15 and 16 are respectfully requested.

Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Robert J. Webster, Registration No. 46,472, at (703) 205-8000, in the Washington, D.C. area.

A prompt and favorable consideration of this Reply is respectfully requested.

Applicant respectfully petitions under the provisions of 37 C.F.R. §§ 1.136(a) and 1.17 for a three-month(s) extension of time in which to respond to the Examiner's Office Action. The Extension of Time Fee in the amount of \$1,110.00 is attached hereto.

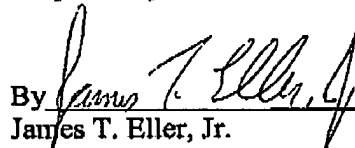
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If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Dated: October 15, 2008

Respectfully submitted,

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